

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA, :  
 :  
vs. : DOCKET NUMBER  
 : 1:16-CR-0237-AT-JSA-1  
JAMES G. MALONEY, :  
 : ATLANTA, GEORGIA  
DEFENDANT. : OCTOBER 23, 2018

**TRANSCRIPT OF SECTION 6 HEARING PROCEEDINGS**

**BEFORE THE HONORABLE JUSTIN S. ANAND**

**UNITED STATES MAGISTRATE JUDGE**

**PART II OF II**

APPEARANCES OF COUNSEL:

**FOR THE GOVERNMENT:**

JOHN RUSSELL PHILLIPS  
STEPHEN H. MCCLAIN  
UNITED STATES ATTORNEY'S OFFICE

**FOR THE DEFENDANT:**

CRAIG C. GILLEN  
ANTHONY C. LAKE  
GILLEN WITHERS & LAKE LLC

LAWANDA N. HODGES  
THE LAW FIRM OF LAWANDA HODGES

***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED  
TRANSCRIPT PRODUCED BY:***

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**P R O C E E D I N G S**

**(Atlanta, Fulton County, Georgia; October 23, 2018.)**

MR. PHILLIPS: I found the email that I was describing that I received yesterday.

THE COURT: Let's wait until Mr. Gillen --

MR. PHILLIPS: Oh, I'm sorry. I thought he was here.

MR. GILLEN: She has our phones.

MR. PHILLIPS: I'm sorry. I was just saying that I found the email that I was describing earlier. If the Court would like me to read it into the record, I'll be happy to do that.

THE COURT: That is fine by me, sure. Probably the mics are off. So keep screaming.

MR. PHILLIPS: It just says there was nothing discoverable.

THE COURT: Okay.

MR. GILLEN: What does that -- what does that mean? Is there something there or not? That is an ambiguous term.

THE COURT: I mean, we went into this in great detail last time. I do recall one of the principles that I relayed before was that the decisions of what is discoverable can't just be left to the agency. You know, that is for the prosecutors who are more aware of what is the issues at play in the case and the legal obligations of what is discoverable under Rule 16 and *Brady* and the like.

1           And so there was discussion of -- I mean, the agency  
2     can implement objective instructions to gather documents that  
3     meet certain, you know, objective criteria but that ultimately  
4     the category of possible documents has to be at some level, you  
5     know, assessed by you-all, not just -- so --

6           MR. PHILLIPS: This was not from the agency. This  
7     was reviewed by Patrick Murphy who is a lawyer at the DOJ at  
8     the NSD who has been working on the case. He is the one that  
9     personally reviewed the documents.

10          THE COURT: He is part of the trial team? You  
11     consider him part of the trial team in this case?

12          MR. PHILLIPS: I do.

13          THE COURT: All right. You know what else -- I don't  
14     know what else I can add at this point. I made the rulings  
15     that I did. You know, I remain happy to look at anything in  
16     camera that is helpful.

17          All right. So I'm pulling up my calendar. How soon  
18     do you think you-all need to submit the document that we  
19     discussed before?

20          MR. GILLEN: Well, this changes things a bit because  
21     now we have got to create the document, and that adds time.  
22     And, candidly, Mr. Lake is going to be doing most of that, and  
23     he has got a United States Supreme Court brief that he is  
24     working on that is coming up in November.

25          So could the Court indulge us and get us to the end

1 of November to file this so we could accommodate his petition  
2 for cert?

3 THE COURT: I mean, as a practical matter I likely  
4 for purposes of a hearing would not have been able to set it  
5 before that point anyway. So I don't -- I don't think that  
6 that would affect my schedule. Let's work backwards from the  
7 earliest I can set it for a hearing because I'm on criminal  
8 duty the next two weeks. And then I'm already jammed with what  
9 is a short week of the 12th because of Veterans Day and then  
10 there is the short week of Thanksgiving, which I already have  
11 some things on. And then I have at least currently a jury  
12 trial in a civil case starting December 3rd, which I doubt if  
13 it really goes would be more than two or three days. Although  
14 I have it blocked off for the week. But I really doubt it  
15 would be that.

16 So probably what I would have to do is set it for  
17 early the following -- the week of the 10th of December.

18 So are y'all available that week?

19 MR. GILLEN: Yes, Your Honor.

20 MR. PHILLIPS: Yes, Your Honor.

21 MR. LAKE: Yes.

22 THE COURT: Would the 11th work? It is always  
23 helpful to have the Monday to prepare.

24 We'll set it for the 11th at 9:30. Therefore,  
25 Mr. Lake, would Friday the 30th work?

1 MR. LAKE: That would be fine, Your Honor.  
2 Absolutely.

3 DR. MALONEY: Is that Thanksgiving week?

4 THE COURT: No. That is the week after.

5 MR. PHILLIPS: Your Honor, I'm sorry. Mr. McClain  
6 has a conflict on the 11th. Could we do the 13th instead?

7 THE COURT: That looks fine by me.

8 MR. GILLEN: That is fine, Your Honor.

9 MR. LAKE: Fine.

10 THE COURT: All right. All right. So what we will  
11 do is docket on the public docket an oral motion to continue  
12 that was made during the classified portion of the hearing by  
13 the defense, which I granted for the reasons that were  
14 explained in that portion of the proceeding.

15 I do find for those reasons that there is good cause  
16 to continue this hearing until December 13 and that the reasons  
17 supporting the continuance outweigh both the defendant's and  
18 the public's right to a speedy trial. So all time will  
19 continue to be excluded through -- at least through  
20 December 13.

21 We also I think -- am I right y'all have filed your  
22 notice of motion? There is the classified motion that was  
23 filed yesterday, and you are filing on the public docket a  
24 notice?

25 MR. PHILLIPS: As soon as we get back to the office,

1 we will do that.

2 THE COURT: So that will -- I'll direct the clerk to  
3 make sure that that is categorized as a motion on the docket,  
4 which I think is important for a number of reasons but  
5 including so that the Speedy Trial Act can accurately reflect  
6 that we're doing work here and not just -- that there is  
7 actually motion-related work that we are undertaking here.

8 All right. So that is all I had for today.  
9 Anything -- oh, I was going to ask when you believed or there  
10 is -- no. I was going to say what -- you are certifying at  
11 this point that you have complied?

12 MR. PHILLIPS: Those were the exact words that I was  
13 told that I read.

14 THE COURT: Okay. All right. That is all I have  
15 then.

16 MR. GILLEN: Thank you, Your Honor.

17 THE COURT: All right. We'll be in recess then.

18 **(The proceedings were thereby concluded at**  
19 **10:56 A.M.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 6 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 9th day of October, 2019.

*Shannon R. Welch*

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SHANNON R. WELCH, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
OFFICIAL CERTIFIED TRANSCRIPT